SHELL OIL COMPANY

IBLA 75-338 Decided May 27, 1975

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting a noncompetitive offer to lease oil and gas in acquired lands, U-28647.

Affirmed.

1. Acquired Lands -- Mineral Leasing Act for Acquired Lands: Lands Subject To -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject To

   An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

APPEARANCES: Elaine D. Stovall, D. Stovall, Attorney for Shell Oil Company, Houston, Texas.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Shell Oil Company has appealed from a decision of the Utah State Office, Bureau of Land Management, dated December 31, 1974, which rejected its noncompetitive acquired lands offer to lease for oil and gas (30 U.S.C. § 351 et seq. (1970) on the ground that the oil and gas deposits in the land are not owned by the United States.

The State Office relied upon a title opinion prepared by the Regional Solicitor, Office of the Solicitor, Department of the Interior, Salt Lake City, Utah, which concluded that the oil and gas interests in the land were held one half by Edgar R. Locke and one half by Edwin C. Lewis, as a result of mineral reservations in prior conveyances of the land.

Shell Oil Company contends that the United States owns a 25% interest in the oil and gas. It alleges that the title opinion was based upon an incomplete study of the title records, that the application of a doctrine or title construction referred to as the Duhig doctrine results in the United States having a 25% mineral interest, and that Shell needs a lease from the United States to protect its interest in the oil and gas deposits if Utah adopts the Duhig doctrine. 1/ Under the Duhig doctrine, it says, the Federal Farm Mortgage Corporation gained a 50% interest in the oil and gas deposits when it acquired the land, but conveyed one-half of that interest, leaving a 25% interest in the United States.

It recognizes that Utah has as yet not adopted the Duhig doctrine, but that since several other states have, it is reasonable to assume that there is a strong possibility that Utah will apply such a doctrine.

A perusal of the title opinion shows that the Regional Solicitor examined all the conveyances that Shell considers pertinent prior to concluding that the United States had no interest in the oil and gas deposits. The Regional Solicitor did not comment on the possible application of the Duhig doctrine, but his conclusion is inconsistent with its applicability.

We are left then with a title opinion concluding that the United States has no interest in the oil and gas deposits and an assertion by Shell that if the Utah Supreme Court were to apply the Duhig doctrine to the facts in the case that the United States would have a 25% interest in the oil and gas. At best then there is a substantial uncertainty whether the United States has any interest in the oil and gas deposits.

The case then is analogous to a recent Board decision in which we held:

1/ The appellant refers to Duhig v. Peavy-Moore Lumber Company, 144 S.W.2d 879 (Tex. Sup. Ct. 1940) as the basis for the Duhig doctrine. It held that where A conveys Blackacre to B by deed reserving a 1/2 mineral interest, and B conveys to C by warranty deed, expressly reserving a 1/2 mineral interest and purporting to convey all other interest in Blackacre, the mineral interest is then owned 1/2 by A and 1/2 by C. It says the doctrine is grounded upon the theory that a grantor will not be allowed to breach his warranty, and will be estopped from doing so against his grantee. The 1/2 mineral interest reserved by B, it says, works to satisfy the 1/2 mineral interest reserved by A, and C takes the other 1/2 by virtue of B's warranty.

In this case, Shell alleges that the United States is in the same position as C.

> In the present appeal appellant cites decisions by the Oklahoma courts in support of his contention that title to the minerals passed to the United States despite the County's reservation.
>
> While his citations establish some precedential support for his contention, they cannot be accepted as clearly determining that the United States would prevail in any quiet title proceeding if it asserted title to the minerals which were reserved in the deeds to it. In the face of the clear reservation in the deeds to the United States, which are of public record, certainty of title to the minerals could not be established without a judicial determination. The refusal of this Department to issue an oil and gas lease prior to any such determination or any refusal to initiate judicial proceedings is not, as appellant suggests, any conferral of the mineral interest in the County contrary to state law. Whether it is in the interest of the United States to initiate litigation is a matter within the discretion of the Department of Justice as advised by the Office of the Solicitor of this Department. * * *
>
> The determinative issue before us in this appeal is whether or not these offers were properly rejected. This Department has held that oil and gas lease offers may properly be rejected in the exercise of administrative discretion where there is a "mere uncertainty regarding title to oil and gas deposits." Carolyn C. Stockmeyer, 1 IBLA 87 (1970); Duncan Miller, A-30451 (November 17, 1965). Regardless of whether or not the title question is further explored by the Office of the Solicitor, rejection of appellant's offers is within the Department's discretion and appropriate for this reason. Cf. 43 CFR 2091.1(e).

J. W. McTiernan, 11 IBLA 284, 286 (1974).

In several other cases the Board has reached the same conclusion. Gas Producing Enterprises, Inc., 15 IBLA 266 (1974); Georgette B. Lee, 10 IBLA 23 (1973) and cases cited therein.

For the same reasons, the rejection of appellant's offer was proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge